Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-638

TIMOTHY GRANADEROS,

Petitioner,

v.

IMMIGRATION & NATURALIZATION SERVICE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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OCTOBER TERM, 1977

No. _____

TIMOTHY GRANADEROS,
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v.
IMMIGRATION & NATURALIZATION SERVICE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The petitioner, TIMOTHY GRANADEROS, prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Sixth Circuit rendered in these proceedings on July 19, 1977.

Jurisdiction

The order or judgment of the United States Court of Appeals for the Sixth Circuit was entered on July 19, 1977. Petitioner files this petition within ninety days of the opinion filed by the Sixth Circuit Court of Appeals under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Petitioner was denied a stay of deportation for a period of time necessary to receive adequate medical treatment for severe injuries sustained as the result of an accident while he was working as a seaman aboard a vessel on Lake Michigan. The question thereby arising is:

1. Whether in refusing to recognize the importance of guaranteeing petitioner's maximum recovery under the Jones Act, the Immigration Board of Appeals abused its discretion in refusing to grant petitioner a stay of deportation.

STATEMENT OF THE CASE

Through no negligence on his own part, petitioner was seriously injured by burns over nearly 60% of his body on November 27, 1972 while working as a seaman aboard the vessel M/T Stolt Falcon on Lake Michigan. The severe burns extended almost over his entire body resulting in permanent scars and disfigurement. While petitioner had already undergone eighteen operations for his burn injury prior to the shipowner's termination of his maintenance and cure funds, his doctors have subsequently estimated that at least ten (10) to fifteen (15) additional operations will be necessary to achieve maximum recovery. Although petitioner is physically capable of traveling to the Philippines, the severe contractures in his hands would cause him great hardship. The severe cosmetic and functional deformity suffered by petitioner can only be cured by highly sophisticated surgical and emotional therapy administered by physicians working as a team. Such a rehabilitation process, necessary to avert the natural involution which almost invariably results from hypertrophic scarring, is best supplied by a team skilled in reconstructive surgery. While the University of Michigan Burn Center can adequately respond to petitioner's psychological and physical problems, no comparable treatment is available in the Philippines. Moreover, it is best for petitioner's psychological well-being to remain in the United States until his full recovery, so that his friends in the Philippines will not observe his severe facial disfigurement.

The Immigration Judge in the case at bar relied on the show cause order, which merely indicated that the petitioner had remained in the United States longer than the twenty-nine (29) days permitted by D-1 landing permits for crewmen, as sufficient grounds to sustain a charge of deportability (T. 4). The Immigration Judge restricted his

inquiry to merely determining whether petitioner had actually remained in the country for longer than the permissible twenty-nine (29) days, stating that there was no requirement that the facts and circumstances underlying the show cause order be alleged with particularity (T. 4). When Austin Howard, counsel for petitioner, asserted at the deportation hearings that it was necessary for petitioner to remain in the United States for medical and psychological reasons, the Immigration Judge stated that any discretionary remedies varying the twenty-nine (29) day limitation lay with the District Director (T. 5). Petitioner submits that there are both compelling legal reasons under the Jones Act and additional humanitarian considerations fully justifying an extension of his stay in the United States by the Board of Appeals for further medical treatment.

Although it is true that petitioner remained in the United States for over three years, such a prolonged stay was necessary due to the series of complex surgical operations. Litigation in the U. S. District Court for the Southern District of New York, relating to whether the shipowner was obligated to continue to pay petitioner's maintenance and cure expenses under the U. S. Merchant Marine Act for medical treatment in an American hospital, has been settled with cash payment and continued medical benefits.

REASON FOR GRANTING THE WRIT

I.

IN REFUSING TO RECOGNIZE THE IMPORTANCE OF GUARANTEEING APPELLANT'S MAXIMUM RECOVERY UNDER THE JONES ACT, THE IMMIGRATION BOARD OF APPEALS ABUSED ITS DISCRETION IN REFUSING TO GRANT APPELLANT A STAY OF DEPORTATION.

The petition in the case at bar presents a question seldom adjudicated in that it involves a conflict between the broad discretion to deny stays of deportation vested in special inquiry officers under the Immigration and Nationality Act and the historically liberal construction of the Jones Act designed to promote the maximum recovery of seamen who sustain injuries in an American port while serving under a shipowner liable under American law. Petitioner submits that the benefits which will redound to the public interest through an approval on this petition of the officer's discretionary use of power pale in significance to the importance of insuring petitioner's full recovery and avoiding an emasculation of his rights under the Jones Act. The crux of appellant's petition is that the provisions of the Immigration and Nationality Act cannot be strictly construed in isolation from the Jones Act without doing violence to Congressional intent. The need for protection of seamen as wards of the court, a principle firmly entrenched in the American law of Admiralty and codified in 46 U.S.C. Sec. 688, should be viewed as a specific limitation on the special inquiry officer's discretion.

Few officials in administrative agencies are vested with the amount of discretion granted to immigration officers in denying stays of deportation. A United States District

Court pointed out in *Dimaren* v. *Immigration and Naturalization Service*, 398 F. Supp. 556 (1974), that while the Immigration and Nationality Act contained statutory provisions for suspensions of deportation, there was no such provision for stays. Thus, the Court was unwilling to even apply 5 U.S.C. Sec. 557 of the Administrative Procedure Act, requiring a record of reasons for conclusions on all material issues of fact, law, or discretion reached by administrative agencies, to cases involving stays of deportation. Reviewing courts will only set aside those rulings by the Immigration Service which are made "without a rational explanation, inexplicably depart from established policies, or rest on an impermissible basis such as invidious discrimination against a particular race or group." *Id.* at 559.

However, the Board of Immigration Appeals can clearly assert a broader scope of review within the Immigration Service's own appellate framework in examining denials of stays by Immigration Judges. The Immigration Judge in the case at bar relied on the show cause order, which merely indicated that the petitioner had remained in the United States longer than the twenty-nine (29) days permitted by D-1 landing permits for crewmen, as sufficient grounds to sustain a charge of deportability (T. 4). The Immigration Judge restricted his inquiry to merely determining whether appellant had actually remained in the country for longer than the permissible twenty-nine (29) days, stating that there was no requirement that the facts and circumstances underlying the show cause order be alleged with particularity (T. 4). When Austin Howard, counsel for petitioner, asserted at the deportation hearings that it was necessary for petitioner to remain in the United States for medical and psychological reasons, the Immigration Judge stated that any discretionary remedies varying the twenty-nine (29) day limitation lay with the District

Director (T. 5). Petitioner submits that there are both compelling legal reasons under the Jones Act and additional humanitarian considerations fully justifying an extension of his stay in the United States by the Board of Appeals for further medical treatment.

Through no negligence on his own part, petitioner was seriously injured by burns over nearly 60% of his body on November 27, 1972 while working as a seaman aboard the vessel M/T Stolt Falcon on Lake Michigan. The severe burns extended almost over his entire body resulting in permanent scars and disfigurement. While petitioner had already undergone eighteen operations for his burn injury prior to the shipowner's termination of his maintenance and cure funds, his doctors have subsequently estimated that at least ten (10) to fifteen (15) additional operations will be necessary to achieve maximum recovery. Although petitioner is physically capable of traveling to the Philippines, the severe contractures in his hands would cause him great hardship. The severe cosmetic and functional deformity suffered by petitioner can only be cured by highly sophisticated surgical and emotional therapy administered by physicians working as a team. Such a rehabilitation process, necessary to avert the natural involution which almost invariably results from hypertrophic scarring, is best supplied by a team skilled in reconstructive surgery. While the University of Michigan Burn Center can adequately respond to petitioner's psychological and physical problems, no comparable treatment is available in the Philippines. Moreover, it is best for petitioner's psychological well-being to remain in the United States until his full recovery, so that his friends in the Philippines will not observe his severe facial disfigurement.

It is thus clear that petitioner's maximum recovery can only be achieved through medical treatment in an American hospital. The United States Supreme Court recognized in

Vaughan v. *Atkinson* that seamen have always enjoyed a special status under American law:

> Maintenance and cure is designed to provide a seaman with food and lodging when he becomes sick or injured in the ship's service; that it extends during the period when he is incapacitated to do a seaman's work and continues until he reaches maximum recovery . . . The reasons underlying the rule, to which reference must be made in defining it, are those enumerated in the classic passage by Mr. Justice Story in *Harden* v. *Gordon*: the protection of seamen, who, as a class, are poor, friendless and improvident, from the hazards of illness and abandonment while ill in foreign ports; the inducements to masters and owners to protect the safety and health of seamen while in service: the maintenance of a merchant marine for the commercial service and maritime defense of the nation by inducing men to accept employment in an arduous and perilous service . . . Admiralty courts have been liberal in interpreting this duty "for the benefit and protection of seamen who are its wards." We noted in *Aguilar* v. *Standard Oil that the shipowner's liability to maintenance and cure was among "the most pervasive of all and that it was not to be defeated by restrictive distinctions nor narrowly confined . . . When there are ambiguities or doubts, they are resolved in favor of the seamen.";* 360 U.S. 527, 531-32 (Emphasis added and citations omitted)

Although it is true that petitioner remained in the United States for over three years, such a prolonged stay was necessary due to the series of complex surgical operations. Litigation in the U.S. District Court for the Southern District of New York, relating to whether the shipowner was obligated to continue to pay petitioner's maintenance and cure expenses under the U.S. Merchant Marine Act for medical treatment in an American hospital, has been settled with cash payment and continued medical benefits. The period of time allowed for maintenance and cure is not limited to any arbitrary length, but is related to the achievement of maximum recovery. Indeed, the Second Circuit upheld one maintenance award which lasted for seven years, *Koslusky* v. *United States*, 208 F. 2d 957 (1953). Similarly, the fact that petitioner is physically capable of returning to the Philippines is not determinative of the issue of whether he is entitled to further treatment in an American hospital, nor should it adversely influence a decision on a stay of his deportation. It is instructive to remember that Federal Courts have consistently held that the issuance of Public Health Service "fit for duty" slips to injured seamen cannot automatically be translated into a finding that maximum medical recovery has been achieved under the Jones Act. *Neff* v. *Dravo*, 407 F. 2d 228 (2d Cir. 1969) and cases cited therein.

Most simply stated, the courts have broadly interpreted Congressional intent in establishing shipowner's obligation under the Jones Act. In those few cases presenting the courts with an opportunity to extend the Act's protection to foreign seamen, there has never been any suggestion that foreigners should be treated with less deference than American seamen. Yet, the inevitable result of denying a deportation stay prior to the achievement of maximum medical recovery is the creation of a double standard which unfairly discriminates between foreign and American seamen, an outcome endorsed neither by Congress nor the courts.

It is true that the Immigration and Nationality Act does not expressly govern requests for stays of deportation. It also seems that 8 U.S.C. Sec. 1282 is absolute in enabling special inquiry officers to move for the voluntary departure or deportation of seamen with D-1 landing permits who have remained in the United States for longer than twenty-nine (29) days. However, petitioner requests that this discretion should be limited when its exercise becomes an obstacle to a foreign seaman's maximum recovery. It is

difficult to comprehend how the Immigration and Nationality Act's purpose of stemming the flow of illegal aliens into this country is advanced by denying a stay of deportation to a foreigner who has every intention of returning to his country after achieving maximum medical recovery. This petition does not present a case in which an alien seeks to illegally flout United States Immigration Laws by placing himself in a situation where "he may subsequently have access to some administrative remedy to adjust his status to that of permanent resident." 1952 *U.S. Code Congressional and Administrative News* 1718. For both humanitarian considerations and in compliance with the legislative intent underlying the Jones Act, petitioner should not be compelled to return to the Philippines where he can never achieve maximum medical recovery from his severe disfigurement.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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Dated: October 14, 1977

APPENDIX A — Copy of Lower Court Decision

(Filed July 19, 1977)

No. 76-2505

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TIMOTHY GRANADEROS,
Petitioner,
v. ORDER
IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

Before: PHILLIPS, Chief Judge, and PECK and LIVELY, Circuit Judges.

This appeal, in which we review an order of deportation issued under 8 U.S.C. §1251(a) (2), has been submitted for consideration pursuant to Rule 3(e), Rules of the Sixth Circuit. The scope of review of this Court is limited to a determination of whether the administrative tribunal properly required the respondent to prove its case by "clear, unequivocal and convincing evidence," and whether the tribunal's findings are supported by "reasonable, substantial and probative evidence." See 8 U.S.C. §1105a(a) (4); *Yaldo* v. *Immigration and Naturalization Service*, 424 F. 2d 501 (6th Cir. 1970); *Au Yi Lau* v. *Immigration and Naturalization Service*, 445 F. 2d 217, 219 (D.C. Cir. 1971), *cert. denied*, 404 U.S. 864 (1971). We conclude that the respondent established its case by the requisite degree of proof, and that the questions on which the decision of the Court depends are so unsubstantial as not to require further argument. Rule 8, Rules of the Sixth Circuit. Nothing herein,

however, is to be construed as precluding application by the petitioner to the District Director for an extension of time in which petitioner may remain in the United States for the purpose of obtaining further medical treatment. In accordance with the foregoing,

IT IS ORDERED that this appeal be and it hereby is dismissed.

ENTERED BY ORDER OF THE COURT

(s) John P. Hehman
Clerk of Court

APPENDIX B — Copy of Decision of Board of Immigration Appeals

(Filed May 17, 1976)

UNITED STATES DEPARTMENT OF JUSTICE
BOARD OF IMMIGRATION APPEALS

(SEAL) Washington, D. C. 20530

File: A15 633 866 — Detroit

In re: TIMOTHY GRANADEROS

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Austin A. Howard,
Esquire
Howard & Howard
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Detroit, Michigan
48226

ON BEHALF OF I&N SERVICE: Adolph F. Angelilli
Trial Attorney

CHARGE:

Order: Section 241(a) (2), I&N Act (8 U.S.C. 1251 (a) (2)) — nonimmigrant crewman — remained longer

APPLICATION: Stay of deportation

This case presents an appeal from a decision of the immigration judge on December 17, 1975, finding the respondent deportable and granting him the privilege of voluntary

departure with an alternate order of deportion to the Philippines. The appeal will be dismissed.

The respondent is a native and citizen of the Philippines who entered the United States as a D-1 Crewman in November 1972 after being seriously injured aboard the vessel M/T Stolt Falcon on Lake Michigan. He was authorized to remain in this country for a period of time not to exceed 29 days. He has remained here while undergoing extensive surgery for severe burns received in the above accident. Deportability has been established by clear, convincing and unequivocal evidence.

We have reviewed the record and are satisfied that the decision of the immigration judge was correct. We note counsel's request on appeal that the respondent be permitted to remain in the United States for further surgery and to achieve maximum recovery in our superior medical facilities. The appropriate officer to whom such a request for stay of deportation must be addressed is the District Director, as pointed out previously by the immigration judge. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

FURTHER ORDER: The respondent is permitted to depart from the United States voluntarily within 31 days from the date of this order or any extension beyond that time as may be granted by the District Director; in the event the respondent fails so to depart, the respondent shall be deported as provided in the immigration judge's order.

Chairman

APPENDIX C — Proof of Service

NO. .....

IN THE
SUPREME COURT OF THE UNITED STATES

TIMOTHY GRANADEROS,
Petitioner,
vs.

IMMIGRATION & NATURALIZATION SERVICE,
Respondent.

PROOF OF SERVICE

STATE OF MICHIGAN
ss.
COUNTY OF WAYNE

FRANCIS HIGGINS, after first being sworn, deposes and says that on this 3rd day of November, 1977, he served and sent a copy of the attached Petition for Writ of Certiorari by mailing the same in a U.S. Mail depository, postage prepaid, addressed to the Solicitor General, Department of Justice, Washington, D. C. 20530.

(s) Francis Higgins

Subscribed and sworn to before me this 3rd day of November, 1977

(s) Jerilyn L. Hill
Notary Public, Wayne County, Michigan
My commission expires: August 6, 1980.